

CALIFORNIA INSTITUTE OF TECHNOLOGY

JET PROPULSION LABORATORY

GENERAL PROVISIONS:

LABOR-HOUR/TIME-AND-MATERIAL SUBCONTRACT

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

The following forms (located at <http://acquisition.jpl.nasa.gov/docs.htm>) are incorporated herein by reference into the Subcontract:

- Minimum Timekeeping Requirements for Labor-Hour Type Procurements to be Performed at Off-Lab Facilities, Form JPL 1725 (Rev. 08/98)
- Release of Information, Form JPL 1737 (Rev. 07/08)
- Self Disclosure, Form JPL 1943 (Rev. 01/08)
- Notification to Prospective Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385 (Rev. 07/91)
- Certifications, Form JPL 2892 (Rev. 10/10)
- Asbestos Notification, Form JPL 2895 (Rev. 01/09)
- Notice of Potential Tax Withholding (Rev. 01/11)

ACCESS TO SENSITIVE INFORMATION

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, REL, RSA, T&MC – 10/10] [NFS 1852.237-72 6/05]

(a) As used in this clause, "sensitive information" refers to:

- (1) Information that a contractor has developed and marked as proprietary, confidential, or with a limited or restricted rights notice, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged;
- (2) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
- (3) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; or
- (4) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

(b) If performing this subcontract entails access to sensitive information, as defined above, the Subcontractor agrees to:

- (1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this subcontract, and not to improve its own competitive position in another procurement nor for any other purpose.
- (2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure using the same standard of care as the Subcontractor uses to protect its own confidential information, but under no circumstances less than a reasonable standard of care.
- (3) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (4) Allow access to sensitive information only to those employees that need it to perform services under this subcontract.
- (5) Preclude access and disclosure of sensitive information to persons and entities outside of the Subcontractor's organization.
- (6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this subcontract and to safeguard it from unauthorized use and disclosure.
- (7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this subcontract.
- (8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, immediately report any breaches to the JPL Subcontracts Manager, and implement any necessary corrective actions.
- (9) Return to JPL or destroy all sensitive information, and copies thereof, no later than the effective date of the termination or expiration of this subcontract. Within thirty days of that effective date, the Subcontractor shall confirm in writing to JPL that all sensitive information received during the course of this subcontract has been returned or destroyed.

(c) The Subcontractor will comply with all procedures and obligations specified in any Organizational Conflicts of Interest Avoidance Plan incorporated into this subcontract.

(d) The nature of the work on this subcontract may subject the Subcontractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this subcontract establishes a high standard of accountability and trust, JPL will carefully review the Subcontractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this subcontract for default, in addition to any other rights and remedies available by law to the Government, JPL or other provider of sensitive information.

- (e) The Subcontractor shall not be liable for the use or disclosure of sensitive information that the Subcontractor can demonstrate is: (1) in the public domain other than by a breach of this clause by the Subcontractor; (2) received by the Subcontractor from a third party without any obligation of confidentiality; (3) known to the Subcontractor without any limitation on use or disclosure prior to its receipt from JPL under this subcontract; (4) independently developed by the employees of the Subcontractor as evidenced by written documentation; or (5) generally made available to third parties by the originator of the sensitive information without restriction on disclosure.
- (f) Unless otherwise specifically provided in this subcontract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.
- (g) The Subcontractor's obligations under this clause shall survive the expiration or termination of this Subcontract.
- (h) Notwithstanding paragraph (b)(5), the Subcontractor may submit a written request to the JPL Subcontracts Manager for authorization to disclose sensitive information to its lower-tier subcontractors. If JPL authorizes the disclosure, the Subcontractor before making any such disclosure must include the substance of this clause, suitably modified to reflect the relationship of the parties, in any lower-tier subcontract that will involve access to sensitive information. The Subcontractor shall also require an acknowledgement in any such lower-tier subcontract that: (1) the corresponding clause is being included for the benefit of JPL as a third-party beneficiary, and (2) in addition to any other rights it may have, JPL is intended to have a right of direct action against the lower-tier subcontractor, or any other person to whom that subcontractor has released or disclosed that sensitive information, to seek damages for any breach and/or to seek enforcement of that clause in the lower-tier subcontract.

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-36 - 06/98]

(This Article applies to Subcontracts that exceed \$10,000 , unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION SUBCONTRACTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC – 10/10] FAR 52.223-2- 12/07]

(This Article applies to Subcontracts for services or construction, unless the subcontract will not involve the use of USDA-designated items at <http://www.usda.gov/biopreferred> or 7 CFR Part 2902.)

Incorporate by reference FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION SUBCONTRACTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC – 10/10] [FAR 52.223-17- 05/08]

(This Article applies to Subcontracts for services or construction, unless the subcontract will not involve the use of EPA-designated items.)

Incorporate by reference FAR 52.223-17, Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts.

ANTI-KICKBACK PROCEDURES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, REL – 02/09] [FAR 52.203-7 – 07/95]

- (a) Definitions.
 - (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a Subcontract relating to a prime contract.
 - (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
 - (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
 - (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
 - (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
 - (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a Subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier subcontractor.
 - (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a Subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the Subcontract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime contractor or higher-tier subcontractor.
- (c)
- (1) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (2) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
 - (3) The Institute may (i) offset the amount of the kickback against any monies owed by the Institute under the Subcontract and/or (ii) direct that the Subcontractor withhold, from sums owed a lower-tier Subcontractor the amount of the kickback. The Institute may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to the Institute unless the Institute has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Subcontractor shall notify the Institute when the monies are withheld.
 - (4) The Subcontractor agrees to incorporate the substance of this Article, including this paragraph, in all lower-tier Subcontracts under this Subcontract which exceed \$100,000.

ASBESTOS NOTIFICATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 02/09]

(This Article applies if any of the Subcontract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Subcontractor acknowledges receipt of "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Subcontractor agrees to coordinate with the JPL Occupational Safety Program Office (OSPO) for special asbestos handling instructions to be given to all Subcontractor's personnel, including Lower-tier Subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all Lower-tier Subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT, NOVATION AND TRANSFER

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, CIS, RSA– 09/04] [FAR 52.244-2(m) – 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.232-23(a) – 01/86]

- (a) The Subcontractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Subcontract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Subcontract.
 - (3) Two copies of the notice of assignment, signed by the Subcontractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Subcontract until JPL is furnished with either (i) verification or denial of assignment from the Subcontractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Subcontractor shall not furnish or disclose to any assignee under this Subcontract any classified document (which term includes this Subcontract if access to classified material is authorized under this Subcontract) or information pertaining to classified work under this Subcontract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Subcontractor's duty to perform the services or provide the supplies required by this Subcontract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Subcontractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Subcontract; provided, however, that nothing contained herein shall be deemed to prohibit the Subcontractor from placing purchase orders and Lower-tier Subcontracts, subject, however, to the provision of this Subcontract entitled "Lower-tier Subcontracts." Delegation of duties without such consent is void.

AUDITS AND RECORDS – NEGOTIATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.215-2 – 06/99]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Subcontract, or any combination of these, the Subcontractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to

be incurred directly or indirectly in performance of this Subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the Subcontract.

If this is a facilities acquisition, the obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this Subcontract.

- (c) Cost or Pricing Data. If the Subcontractor has been required to submit cost or pricing data in connection with pricing action relating to this Subcontract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to:
 - (1) The proposal for the Subcontract, Lower-tier Subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the Subcontract, Lower-tier Subcontract, or modification; or
 - (4) Performance of the Subcontract, Lower-tier Subcontract, or modification.
- (d) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a Lower-tier Subcontract hereunder.
 - (2) This paragraph (d) may not be construed to require the Subcontractor or Lower-tier Subcontractor to create or maintain any record that the Subcontractor or Lower-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Subcontract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Subcontract. In addition:
 - (1) If this Subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Subcontractor shall make available records relating to appeals under the "Disputes" Article or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.
 - (3) If this Subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
 - (4) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this Subcontract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Subcontract, shall be made available until such appeals, litigation, or claims are finally resolved.
- (g)
 - (1) The Subcontractor shall insert all of the provisions of this Article, including this paragraph (g), in all Lower-tier Subcontracts under this Subcontract that exceed \$100,000, and:
 - (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

- (B) For which cost or pricing data are required; or
 - (C) That requires the Lower-tier Subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement Subcontract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Subcontract.

AUTHORITY OF JPL REPRESENTATIVES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04]

- (a) No request, notice, authorization, direction or order received by the Subcontractor and issued either pursuant to a provision of this Subcontract, to a provision of any document incorporated in this Subcontract by reference, or otherwise, shall be binding upon either the Subcontractor or the Institute unless issued or ratified in writing by the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Subcontractor shall immediately notify, in writing, the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Subcontract amount or amount allotted to this Subcontract; or (iii) otherwise be the basis for assertion of a claim by the Subcontractor under any provision of the Subcontract.

AUTHORIZATION AND CONSENT

[CT, FP-R&D, T&MC, LH/T&M, CREI, A – E, RSA – 09/04] [FAR 52.227-1 – 07/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.
- (b) The Subcontractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all Lower-tier Subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any Lower-tier Subcontract, under or over \$100,000, does not affect this authorization and consent.

BANKRUPTCY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.242-13, 07/95]

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the Subcontract, written notification of the bankruptcy to the JPL Subcontracts Manager responsible for administering the Subcontract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL Subcontract numbers for all JPL Subcontracts against which final payment has not been made. This obligation remains in effect until final payment under this Subcontract.

BUY AMERICAN ACT – SUPPLIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, CREI – 09/04] [FAR 52.225-1 - 05/02]

(This Article applies to supply Subcontracts exceeding \$2,500 and to Subcontracts for services which involve the furnishing of supplies when the supply portion of the Subcontract exceeds \$2,500.)

Incorporate by reference FAR 52.225-1, Buy American Act - Supplies.

CHANGES – LABOR-HOUR/TIME-AND-MATERIAL

[LH/T&M, T&MC – 09/04] [FAR 52.243-3 – 09/00]

- (a) JPL may at any time, by written unilateral modification, and without notice to the sureties, if any, make changes or issue directions within the general scope of this Subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for JPL in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
 - (7) Amount of GFP.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Subcontract, whether or not changed by the modification, or otherwise affects any other provision of this Subcontract, JPL shall make an equitable adjustment in the (i) ceiling price, (ii) hourly rates, (iii) delivery or performance schedule, and (iv) other affected provisions, and shall modify the Subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Subcontract.
- (d) Except as provided in paragraph (e) below, nothing contained in this Article shall excuse the Subcontractor from proceeding with the Subcontract as changed.
- (e) Notwithstanding the provisions of paragraphs (a) through (d) above, the ceiling price of this Subcontract shall not be increased or deemed to be increased except by specific written modification of the Subcontract indicating the new Subcontract ceiling price. Until such modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in paragraph (f) or (g) of the Article of this Subcontract entitled "Timekeeping and Payments."

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A - E – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Subcontractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefore, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Subcontractor or any of its Lower-tier Subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) Subcontractor agrees to insert this Article, including (c), in all Lower-tier Subcontracts and purchase orders hereunder.

CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M – 09/04] [NFS 1852.228-72 - 09/93; 1852.228-78 – 09/93; 1852.228-76 – 12/94]

(This Article is applicable if the Subcontract value is \$100,000 or more.)

The Subcontractor understands that the work performed under this Subcontract may be in support of "Protected Space Operations" as defined in the three paragraphs (b)(5) under Part A, Part B, and Part C below, and therefore agrees to all three cross-waiver provisions set forth below. The Subcontractor shall incorporate this Article into Lower-tier Subcontracts that are for \$100,000 or more.

Part A. CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving Space Shuttle services are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to Subcontractors and related entities under their Subcontracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
 - (1) "Subcontractors" and "Lower-tier Subcontractors" include suppliers of any kind.
 - (2) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage;
 - (3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;
 - (4) "Payload" means any property to be flown or used on or in the Space Shuttle; and
 - (5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this Subcontract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this Subcontract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
 - (6) "Related entity" means:
 - (A) A party's Subcontractors or Lower-tier Subcontractors at any tier;
 - (B) A party's users or customers at any tier; or
 - (C) A Subcontractor or Lower-tier Subcontractor of a party's user or customer at any tier.
- (c)
 - (1) The Subcontractor agrees to a waiver of liability pursuant to which the Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and Subcontract, against:
 - (A) Any party other than the Government;
 - (B) A related entity of any party other than the Government; and

- (C) The employees of any of the entities identified in (c)(1)(A) and (c)(1)(B) above.
- (2) The Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to Lower-tier Subcontractors at any tier by requiring them, by Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389), Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
- (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

PART B. CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to Subcontractors and Lower-tier Subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
- (1) "Subcontractors" and "Lower-tier Subcontractors" include suppliers of any kind.
 - (2) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage;
 - (3) "Party" means a person or entity that signs an agreement involving an ELV launch;
 - (4) "Payload" means any property to be flown or used on or in the ELV; and
 - (5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the Subcontract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform the Subcontract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;

- (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
- (6) "Related entity" means:
 - (A) A party's Subcontractors or Lower-tier Subcontractors at any tier;
 - (B) A party's users or customers at any tier; or
 - (C) A Subcontractor or Lower-tier Subcontractor of a party's user or customer at any tier.
- (c)
 - (1) The Subcontractor agrees to a waiver of liability pursuant to which the Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to a delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and Subcontract, against:
 - (A) Any party other than the Government;
 - (B) A related entity of any party other than the Government; and
 - (C) The employees of any of the entities identified in (c)(1)(A) and (B) above.
 - (2) The Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to Lower-tier Subcontractors at any tier by requiring them, by Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
 - (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
 - (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
 - (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
 - (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.
 - (6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

PART C. CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

- (a) The Intergovernmental Agreement for Space Station Freedom contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this provision is to extend this cross-waiver requirement to Subcontractors and Lower-tier Subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.
- (b) As used in this provision, the term:

- (1) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage.
 - (2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth that carries payloads or persons, or both.
 - (3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA), and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.
 - (4) "Payload" means any property to be flown or used on or in a launch vehicle or the Space Station.
 - (5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this Subcontract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this Subcontract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
 - (6) "Related entity" means:
 - (A) A Partner State's Subcontractors or Lower-tier Subcontracts at any tier;
 - (B) A Partner State's users or customers at any tier; or
 - (C) A Subcontractor or Lower-tier Subcontractor of a Partner State's user or customer at any tier.
 - (7) "Subcontractors" and "Lower-tier Subcontractors" include suppliers of any kind.
- (c)
- (1) The Subcontractor agrees to a cross-waiver of liability pursuant to which the Subcontractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and Subcontract against:
 - (A) Any Partner State other than the United States;

- (B) A related entity of any Partner State other than the United States; and
 - (C) The employees of any of the entities identified in paragraphs (c)(1)(A) and (B) above.
- (2) The Subcontractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to Lower-tier Subcontractors at any tier by requiring them, by Subcontract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
 - (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and Other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
 - (4) Notwithstanding the other provisions of this provision, this cross-waiver of liability shall not be applicable to:
 - (A) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Subcontractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
 - (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

DATA REMOVAL FROM COMPUTERS AND ELECTRONIC DEVICES

[CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A-E, RSA – 02/09] [NPR 2810.1A – 05/06]

The Subcontractor shall archive all data required to be retained pursuant to the terms of this Subcontract (including, but not limited to, the General Provisions, Additional General Provisions, Alterations to General Provisions and Special Provisions). The Subcontractor shall completely sanitize (e.g., overwrite, degauss or destroy) all media containing data in all computers and other electronic devices and permanently delete all non-transferable licensed software before such computers or other electronic devices leave the control of the Subcontractor by transfer or disposal. All data, including computer software, provided by JPL, derived from JPL data, or owned by the Government or JPL pursuant to this Subcontract shall be permanently deleted from Subcontractor controlled computers or electronic devices before leaving the control of the Subcontractor. The Subcontractor shall submit to JPL a written certification that the above sanitization requirements have been satisfied and the date of such action.

DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.211-15 – 09/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

DEFINITIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A – E, RSA – 02/09] [FAR 52.202-1 –12/01]

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term “Administrator” means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term “commercial component” means any component that is a commercial item.
- (c) The term “commercial item” means (see related term “nondevelopmental item,” below):
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;

- (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
- (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
 - (A) Modifications of a type customarily available in the commercial marketplace; or
 - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if:
 - (A) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-
 - (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or supplier, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A non-developmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11 (a).
- (e) Any reference to the "Contract Disputes Act" is meant to refer to the Disputes provision in this Subcontract, if any.
- (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Subcontract, unless otherwise indicated.
- (h) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (i) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.

- (j) The term "Institute" means the California Institute of Technology as a party to this Subcontract.
- (k) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. The rights of JPL under this Subcontract are the rights of the California Institute of Technology as a party to this Subcontract.
- (l) The term "JPL Subcontracts Manager" means the individual authorized to issue and administer this Subcontract for JPL.
- (m) The term "Lower-tier Subcontract," as used in this Subcontract, includes, but is not limited to, purchase orders under this Subcontract.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Subcontract, unless otherwise indicated.
- (p) The term "non-developmental item" means:
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),
- (s) The term "Schedule" means the statements in the order/Subcontract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (t) The term "Subcontract amount" means the Subcontract price, the estimated cost and fee, if any, or the ceiling price of the Subcontract.
- (u) The term "Subcontractor" means the selling party to this Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Subcontractor" is the Lower-tier Subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (v) The terms "United States" or "U.S." mean the United States of America.

DRUG-FREE WORKPLACE REQUIREMENTS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.223-6 - 05/01]

The Subcontractor agrees to inform all Subcontractor personnel who work at JPL or are involved with any JPL activity on or off JPL premises that they are required to comply with the JPL "Drug Free Workplace Policy." The Subcontractor further agrees to inform all Subcontractor personnel, working at JPL or involved with any JPL activity on or off JPL premises that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Subcontractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

The Subcontractor shall institute and maintain a program for achieving a drug and alcohol-free workforce. As a minimum, the program shall provide for pre-employment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of subcontractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance.

ELECTRICAL EQUIPMENT ACQUISITION

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04]

(This Article is applicable if the Subcontract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Subcontractor under this Subcontract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Subcontractor at the Subcontractor's expense. The Subcontractor agrees to require Lower-tier Subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, CIS – 09/04] [FAR 52.222-35 – 12/01]

(This Article is applicable to this Subcontract (and any Lower-tier Subcontract) when the Article at 52.22-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC – 10/10] [FAR 52.223-15- 12/07]

(In this Article, the terms “contractor,” “Government” and “Contracting Officer” are hereby replaced by the terms “Subcontractor,” “JPL,” and “JPL Subcontracts Manager” respectively.)

Incorporate by reference FAR 52.223-15, Energy Efficiency in Energy-Consuming Products.

ENVIRONMENTAL COMPLIANCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.223-11 – 05/01; 52.223-12 – 05/95]

(This Article is applicable to all Subcontracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the Subcontractor shall comply with the provisions set forth below.
- (b) The Subcontractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7671h) as each or both apply to this Subcontract.
- (c)

- (1) Definition. "Ozone-depleting substance", as used in this clause, means any substance the Environmental Protection Agency (EPA) designates in 40 CFR Part 82 as: (i) Class I, including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (ii) Class II, including, but not limited to, hydrochlorofluorocarbons.
- (2) The Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) (*)_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(* The Subcontractor shall insert the name of the substance(s))

EQUAL OPPORTUNITY

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-26 – 04/02]

(The following Article is applicable unless this Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees who were not recruited within the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Subcontract], the Subcontractor has been or is awarded nonexempt Federal Subcontracts and/or Lower-tier Subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with FAR 52.222-26 during performance of this Subcontract. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-35 - 12/01]

(This Article applies to Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (SUBCONTRACTOR PERSONNEL IN RESIDENCE AT JPL)

[CT, LH/T&M, T&MC – 09/04]

(This Article applies if the Subcontract work will be performed at a JPL-controlled facility, and tools, equipment, or materials will be issued to the Subcontractor's personnel by JPL.)

- (a) Subcontractor personnel will not bring work Items, i.e., tools, equipment (for example, personal computers and printers), or material, upon the premises while working at a JPL-controlled facility. JPL will provide those Items necessary for performance of work at a JPL-controlled facility, and such Items shall not be removed from the premises unless removal from JPL premises is specifically authorized by the JPL Supply and Equipment Section Manager or designated representative. Items so provided shall not be considered "Government-Furnished Property," and will not be subject to the "Government Property" Article of this Subcontract, but will be issued to individual Subcontractor personnel. Subcontractor personnel will be held to the same standards of conduct regarding such Items as JPL employees, that is:
 - (1) Subcontractor personnel shall promptly notify their supervisor or the Cognizant JPL Technical Representative of any loss, damage, or destruction of Items issued to them.
 - (2) The Subcontractor will be held liable for any loss, damage, or destruction of such Items resulting from gross negligence, willful misconduct, unlawful appropriation by its personnel for personal use or benefit, or use for other than JPL business on the part of its personnel.
- (b) The Subcontractor agrees to inform its personnel who may work at a JPL- controlled facility of this procedure and of their responsibilities. JPL will advise the Subcontractor promptly upon determining that any Subcontractor personnel have failed to return or satisfactorily account for any Item issued to such personnel. The Subcontractor agrees that JPL may withhold from any monies due or to become due the Subcontractor under this Subcontract, or to otherwise reimburse JPL, the value of any Items issued to Subcontractor personnel and neither returned nor satisfactorily accounted for upon completion of work under this Subcontract or when so requested by JPL.

EXCUSABLE DELAYS

[CT, LH/T&M, T&MC – 09/04] [FAR 52.249-14 – 04/84]

- (a) Except for defaults of Lower-tier Subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this Subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these are (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In

each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) If the failure to perform is caused by the failure of a Lower-tier Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and Lower-tier Subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless:
 - (1) The Lower-tier Subcontracted supplies or services were obtainable from other sources;
 - (2) JPL ordered the Subcontractor in writing to purchase these supplies or services from the other source; and
 - (3) The Subcontractor failed to comply reasonably with this order.
- (c) Upon request of the Subcontractor, JPL shall ascertain the facts and extent of the failure. If JPL determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Institute under the "Termination" Article of this Subcontract.

EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, CREI – 09/04] [NFS 1852.227-86 – 12/87]

(This Article is applicable to the acquisition of any existing commercial computer software under this Subcontract.)

- (a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Supplier/Subcontractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Subcontract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Subcontract.
- (b) Although the Supplier/Subcontractor might not propose its standard commercial software license until after this Purchase Order/Subcontract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Subcontract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Supplier/Subcontractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Subcontract into which this Article is incorporated.
- (c) The Supplier's/Subcontractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Subcontract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Supplier/Subcontractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Subcontract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The following restricted rights shall apply:
 - (1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/Subcontract.
 - (2) The commercial computer software may be:
 - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government contract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
 - (B) Reproduced for safekeeping (archives) or backup purposes;
 - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
 - (D) Disclosed and reproduced for use by Government or Institute Subcontractors or their Lower-tier Subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

- (3) If the incorporated Supplier's/Subcontractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
- (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government contract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above. Any copyright license required in order to perform work under this Lower-tier Subcontract is freely transferable to any successor-in-interest of the Subcontractor, a successor Subcontractor to operate JPL, or the Government
- (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.
- (e) The Subcontractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this Subcontract in accordance with the terms of this Subcontract.

EXPORT LICENSES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [NFS 1852.225-70]

- (a) The Subcontractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Subcontract. In the absence of available license exemptions/exceptions, the Subcontractor shall be responsible for obtaining the appropriate licenses or other approvals, if required for exports of hardware, technical data, and software, or for the provision of technical assistance.
- (b) The Subcontractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Subcontract, including instances where the work is to be performed on-site at JPL, where the foreign person will have access to export-controlled technical data or software.
- (c) The Subcontractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.
- (d) The Subcontractor shall be responsible for ensuring that the provisions of this clause apply to its Lower-tier Subcontractors.
- (e) The Subcontractor may request, in writing, that the Contracting officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4 (b) (3). The Contracting Officer or designated representative may authorize or direct use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

FACSIMILE AND ELECTRONIC COPIES ACCEPTABLE

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 10/10]

The parties agree that facsimile (fax) and electronic copies of image file formats in .PDF, .TIFF, .JPG, .BMP, and .GIF of subcontract documents electronically submitted are just as binding as originally executed documents.

FEDERAL, STATE, AND LOCAL TAXES

[LH/T&M, T&MC – 09/04] [FAR 52.229-3 –04/03]

The rates, and any other amounts reimbursable under this Subcontract, include all Federal, State, and local taxes determined to be allowable under FAR 31.2 and any corresponding implementing or supplementing provisions in the NFS.

FELONY CONVICTION INFORMATION (SUBCONTRACTOR PERSONNEL PERFORMING WORK AT JPL CONTROLLED FACILITIES)

[CT, LH/T&M, T&MC – 02/09]

(This Article applies to Subcontractor Personnel and/or Lower-tier Subcontractor Personnel performing work at JPL controlled facilities.)

When access to JPL facilities is required by Subcontractor Personnel and/or Lower-tier Subcontractor Personnel, the Subcontractor Personnel and/or Lower-tier Subcontractor Personnel shall provide JPL requested personnel access

information, including a "Self Disclosure Form" (form JPL 1943), executed by the person requiring access. This request shall be provided to the Office of Protective Services (OPS) at least 24 hours prior to the time access is required to JPL premises. JPL reserves the right to approve or deny access to its facilities, based on the response given on form JPL 1943 or on other information available to JPL.

FINAL REPORT

[CT, FP-NR&D, FP-R&D, LH/T&M, CREI, RSA – 09/04] [NPG 2200.2A]

(This Article applies to Subcontracts requiring final, formal, published reports prepared for NASA funded or sponsored science technology, research and development, and space flight projects).

The Subcontractor's final published report shall (1) indicate that the work is funded by NASA, (2) be formatted in accordance with NPG 2200.2A, (3) be correctly marked to ensure appropriate dissemination, and (4) be forwarded to JPL.

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [NFS 1852.244-70 – 04/85]

(This Article is applicable to Subcontracts and Lower-tier Subcontracts of \$100,000 or more. Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.244-70, Geographic Participation in the Aerospace Program.

GOVERNMENT PROPERTY

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A - E – 09/04] [FAR 52.245-4 – 06/03]

- (a) JPL shall deliver to the Subcontractor, at the time stated in the Schedule, or, if not so stated, in sufficient time to enable the Subcontractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, JPL shall equitably adjust affected provisions of this Subcontract in accordance with the Changes Article when:
 - (1) The Subcontractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Subcontractor shall use the JPL-furnished property only in connection with this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Subcontract; or
 - (3) As otherwise provided for by the provisions of this Subcontract.
- (d) Upon completing this Subcontract, the Subcontractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Subcontract or previously delivered to JPL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid as directed by JPL.
- (e) If this Subcontract is to be performed outside the United States and its outlying areas, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the Subcontractor under this Subcontract, the Subcontractor shall submit the "Contractor-Held Asset Tracking System (CHATS) Report monthly and the NASA Form 1018, "NASA Property in the custody of Contractors" (or equivalent) (or a negative report, if applicable); to JPL annually (date to be determined by JPL).

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-3 – 1/97, Alt. I – 07/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Subcontract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL Subcontracts Manager in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

INJURY AND ILLNESS PREVENTION PROGRAM

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04]

All Subcontractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

INSPECTION – TIME AND MATERIAL AND LABOR HOUR

[T&MC, LH/T&M – 09/04] [FAR 52.246-6 – 05/01]

(a) Definitions.

- (1) "Subcontractor's managerial personnel," as used in this Article, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (A) All or substantially all of the Subcontractor's business;
 - (B) All or substantially all of the Subcontractor's operation at any one plant or separate location at which the Subcontract is being performed; or
 - (C) A separate and complete major industrial operation connected with the performance of this Subcontract.
- (2) "Materials," as used in this Article, includes data when the Subcontract does not include the Warranty of Data clause.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to JPL covering the material, fabricating methods, work, and services under this Subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to JPL during Subcontract performance and for as long afterwards as the Subcontract requires.
- (c) JPL has the right to inspect and test all materials furnished and services performed under this Subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. JPL, through any authorized representative, may also inspect the plant or plants of the Subcontractor or any Lower-tier Subcontractor engaged in Subcontract performance. JPL shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If JPL performs inspection or test on the premises of the Subcontractor or a Lower-tier Subcontractor, the Subcontractor shall furnish and shall require Lower-tier Subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the Subcontract, JPL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (f) At any time during Subcontract performance, but not later than six months (or such other time as may be specified in the Schedule) after acceptance of the services or materials last delivered under this Subcontract, JPL may require the Subcontractor to replace or correct services or materials that at time of delivery failed to meet Subcontract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the "Timekeeping and Payments" Article of this Subcontract, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

- (g) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or ceiling price as increased by JPL), JPL may:
 - (1) By Subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under this Subcontract (or require repayment of any payments theretofore made); or
 - (2) Terminate this Subcontract for default.
- (h) Notwithstanding paragraphs (f) and (g) above, JPL may at any time require the Subcontractor to remedy by correction or replacement, without cost to the Institute, any failure by the Subcontractor to comply with the requirements of this Subcontract, if the failure is due to (i) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel or (ii) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This Article applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this Subcontract.
- (j) The Subcontractor has no obligation or liability under this Subcontract to correct or replace materials and services that at time of delivery do not meet Subcontract requirements, except as provided in this Article or as may be otherwise specified in the Subcontract.
- (k) Unless otherwise specified in the Schedule, the Subcontractor's obligation to correct or replace Government-furnished property shall be governed by the Article entitled "Government Property."
- (l) If this Subcontract, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the work to JPL for approval, any such approval given by JPL, prior to final acceptance, shall not relieve the Subcontractor of its responsibility for complying with the specifications and other provisions of this Subcontract. Any such approval shall not be construed as an assumption by JPL of the responsibility that such work complies or will comply with the specifications or other provisions of this Subcontract.

INSURANCE AND INDEMNIFICATION

[FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC – 09/04] [FAR 52.228-5 - 01/97]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This Article is applicable if:
 - (1) The performance of this Subcontract includes activities which could endanger non-Subcontractor personnel and such activities are performed at a location which is not secured by appropriate Subcontractor-controlled access restrictions; or
 - (2) This Subcontract requires work on a Government installation or premises under the control of the Institute, unless:
 - (A) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
 - (B) All such work is to be performed outside the United States, its possessions, or Puerto Rico.
- (b) Insurance. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
 - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Subcontract operations are so commingled with the Subcontractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private

carriers. However, the Subcontractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Subcontractor is qualified pursuant to statutory authority to do so.

- (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
- (c) Insurance Certificates and Endorsements. Before commencing work under this Subcontract, the Subcontractor shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Subcontract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (ii) until 30 days after the insurer or the Subcontractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Subcontract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Subcontractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Subcontractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Subcontractor.
- (d) Indemnification. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Subcontractor or any of its Lower-tier Subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (e) Lower-tier Subcontracts.
 - (1) The Subcontractor shall insert the substance of this Article, including this paragraph (e), in Lower-tier Subcontracts under this Subcontract if:
 - (A) The performance of the Lower-tier Subcontract includes activities which could endanger non-Lower-tier Subcontractor personnel and such activities are performed at a location which is not secured by appropriate Lower-tier Subcontractor-controlled access restrictions; or
 - (B) This Lower-tier Subcontract requires work on a Government installation or premises under the control of the Institute, unless:
 - (i) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
 - (ii) All such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties.
 - (2) At least five days before entry of each such Lower-tier Subcontractor's personnel on the Government installation or Institute-controlled premises, the Subcontractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (c) above, for each such Lower-tier Subcontractor.

INTEGRITY OF UNIT PRICES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [FAR 52.215-14 – 10/97]

(This Article is applicable if the initial Subcontract price exceeds \$100,000, unless the Subcontract is for services where supplies are not required, construction or architect-engineer services, utility services, commercial items, or petroleum products.)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within Subcontracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g.,

manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

- (b) The Subcontractor shall insert the substance of this Article in all Lower-tier Subcontracts meeting the applicability prescription above.

LIMITATION OF LIABILITY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [FAR 52.246-23, 52.246-24, and 52.246-25 – 02/97]

This Article includes 3 Parts: Part 2, Limitation of Liability – High Value Items, applies to all items delivered under this Subcontract to JPL which have a unit cost exceeding \$100,000; Part 1, Limitation of Liability, applies to all other items delivered under this Subcontract. Part 3, Limitation of Liability – Services, applies if the Subcontract is over \$100,000 and requires the performance of services.

Part 1: LIMITATION OF LIABILITY

(Applies to all items delivered under this Subcontract other than High Value Items)

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this Subcontract, the Subcontractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this Subcontract) that (i) occurs after acceptance of the supplies delivered under this Subcontract and (ii) results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel," as used in this Article, means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the Subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Subcontract, the Subcontractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute and the Government occurring after acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Subcontract.
- (d) The Subcontractor shall include this Article, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all Lower-tier Subcontracts.

PART 2: LIMITATION OF LIABILITY – HIGH VALUE ITEMS

(Applies to all items delivered under this Subcontract to JPL which have a unit cost exceeding \$100,000)

- (a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this Subcontract, the Subcontractor shall not be liable for loss of or damage to property of the Institute or the Government (including the supplies delivered under this Subcontract) that:
 - (1) Occurs after JPL acceptance of the supplies delivered under this Subcontract; and
 - (2) Results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or JPL's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the

Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel," as used in this Article, means the Subcontractor's directors, officers and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:

- (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the Subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Subcontract, the Subcontractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after JPL acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Subcontract.
- (d)
- (1) This Article does not diminish the Subcontractor's obligations, to the extent that they arise otherwise under this Subcontract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this Subcontract.
 - (2) Unless this is a cost-reimbursement Subcontract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by JPL, the Subcontractor shall, as determined by JPL:
 - (A) Pay the Institute the amount it would have cost the Subcontractor to make correction, repair, or replacement before the loss or damage occurred; or
 - (B) Provide other equitable relief.
- (e) This Article shall not limit or otherwise affect the Institute's or the Government's rights under Articles, if included in this Subcontract, that cover:
- (1) Warranty of technical data;
 - (2) Ground and flight risks or aircraft flight risks; or
 - (3) Government property.
- (f) In each Lower-tier Subcontract, except a Lower-tier Subcontract covered by paragraph (g) below, the Subcontractor shall insert the appropriate Article, supplemented as necessary to reflect the relationship of the contracting parties, as follows:
- (1) In Lower-tier Subcontracts for high-value items only, after obtaining JPL's advance written approval, insert this Article, including this paragraph (f).
 - (2) In Lower-tier Subcontracts for other end items only, insert the clause at FAR subsection 52.246-23, Limitation of Liability.
- (g) In any Lower-tier Subcontract for both high-value items for which this Article is appropriate, and other end items for which the clause at FAR subsection 52.246-23, and any corresponding implementing or supplementing provisions in the NFS, is appropriate, after obtaining the JPL's advance written approval to use this Article, the Subcontractor shall:
- (1) Include both this Article and the FAR clause;
 - (2) Identify high-value items by line item; and
 - (3) Insert the following preamble before paragraph (a) of this Article as used in that Lower-tier Subcontract:

"(This Article shall apply only to those items identified in this Subcontract as being subject to this Article.)"

PART 3: LIMITATION OF LIABILITY – SERVICES

(Applies if the Subcontract is over \$100,000 and requires the performance of services)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Subcontractor is expressly responsible under this Subcontract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Subcontractor shall not be liable for loss of or damage to property of the Institute or the Government that:
 - (1) Occurs after Institute acceptance of services performed under this Subcontract; and
 - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Institute acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel," as used in this provision, means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one plant, laboratory, or separate location at which the Subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through the Subcontractor's performance of services or furnishing of materials under this Subcontract, the Subcontractor shall be liable to the Institute or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute or the Government occurring after Institute acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this Subcontract.
- (d) The Subcontractor shall include this provision, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all Lower-tier Subcontracts over \$25,000.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.203-12 – 06/97]

(This Article applies if this Subcontract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

LIMITATION ON RESTRICTIVE MARKINGS

[CREI, CT, FP-NR&D, FP-R&D, LH/T&M , RSA , T&MC- 10/10]

- (a) Information delivered or otherwise provided by the Subcontractor to JPL in connection with this Subcontract shall not contain any Restrictive Markings, except as permitted by section (b) below or as required by law. As used in this Article, "Restrictive Markings" means any marking, legend or other indicia intended to limit use of the information. For example, "Restrictive Markings" may include, but are not limited to, "Proprietary," "Confidential," or substantially equivalent designation, as well as the Limited and Restricted Rights Notices that may be set forth in the "Rights in Data – General" Article of this Subcontract. Restrictive Markings not permitted by section (b) below impose no obligations or restrictions on JPL's use and disclosure of information, and, unless otherwise agreed in writing, JPL is entitled to disregard and/or remove such unpermitted Restrictive Markings on information in its possession at any time without notice to the Subcontractor.
- (b) The following Restrictive Markings shall be permitted under this Subcontract:
 - (1) The Limited Rights Notice permitted under paragraph (g)(2) of the "Rights In Data – General" Article, if included in this Subcontract.
 - (2) The Restricted Rights Notice permitted under paragraph (g)(3) of the "Rights in Data – General" Article, if included in this Subcontract.
 - (3) "Proprietary," "Confidential," or substantially equivalent designations may be included on Subcontractor's financial, administrative, cost, pricing or management information relating to the administration of this Subcontract. Any such Restrictive Markings must specifically identify the type of financial or administrative information, for example, "[SUBCONTRACTOR NAME] Proprietary Cost Information."

- (4) Copyright notices to the extent permitted by paragraph (c) of the "Rights In Data – General" Article in this Subcontract.
- (5) [RESERVED]
- (c) JPL retains the right to challenge any Restrictive Markings identified in section (b) above. Challenges to such markings shall be made in accordance with the procedures set forth in paragraph (e) of the "Rights in Data – General" Article in this Subcontract.
- (d) Where information contains both unrestricted and restricted data subject to the Restrictive Markings permitted in section (b) above, the Subcontractor shall mark only those pages, parts or portions of the information that are subject to restrictions permitted in section (b).
- (e) Upon the execution of this Subcontract, all prior confidentiality agreements between JPL and the Subcontractor relating to or otherwise encompassing the subject matter of this Subcontract are hereby terminated. The obligation to maintain confidentiality of any information disclosed pursuant to such agreements shall survive termination and continue for the nondisclosure period set forth therein or, if none is specified, for the term of this Subcontract. Notwithstanding the foregoing, should use of information previously delivered by Subcontractor to JPL under a confidentiality agreement be deemed necessary for the performance of this subcontract, the Subcontractor must identify in writing to JPL which Restrictive Markings permitted in section (b)(1)-(4) above apply, if any, within thirty (30) days of the execution of this Subcontract.

LIMITATION ON WITHHOLDING OF PAYMENTS

[CT, LHT&M, T&MC, CREI – 09/04] [FAR 52.232-9 – 04/84]

If more than one Article of this Subcontract authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one Article at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any Article relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this Subcontract; and
- (c) The recovery of overpayments.

LOWER-TIER SUBCONTRACTS

[LH/T&M, T&MC – 09/04] [FAR 52.244-2 – 08/98]

- (a) No Lower-tier Subcontract shall be made by the Subcontractor for the furnishing of any of the work herein Subcontracted for without the prior written consent or approval of JPL.
- (b) No Lower-tier Subcontract placed under this Subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement Lower-tier Subcontracts shall not exceed the fee limitations in FAR 15.404-4.
- (c) Unless the consent or approval specifically provides otherwise, consent by JPL to any Lower-tier Subcontract shall not constitute a determination (i) of the acceptability of any Lower-tier Subcontract terms or conditions, (ii) of the acceptability of any Lower-tier Subcontract price or of any amount paid under any Lower-tier Subcontract, or (iii) to relieve the Subcontractor of any responsibility for performing this Subcontract.

LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.244-6 – 05/02]

- (a) Definition.
 - (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
 - (2) "Lower-tier Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or Lower-tier Subcontractor at any tier.

- (b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its Lower-tier Subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Subcontract.
- (c)
 - (1) The Subcontractor shall insert the following clauses in Lower-tier Subcontracts for commercial items:
 - (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2)(3)), in all Lower-tier Subcontracts that offer further Lower-tier Subcontracting opportunities. If the Lower-tier Subcontract (except Lower-tier Subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the Lower-tier Subcontractor must include 52.219-8 in lower tier Subcontracts that offer Lower-tier Subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
 - (2) While not required, the Subcontractor may flow down to Lower-tier Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its Subcontractual obligations.
- (d) The Subcontractor shall include the terms of this Article, including this paragraph (d), in Lower-tier Subcontracts awarded under this Subcontract.

MATERIAL REQUIREMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.211-5 – 08/00]

- (a) Definitions (As used in this Article).
 - (1) New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet Subcontract requirements, including but not limited to, performance, reliability, and life expectancy.
 - (2) Reconditioned means restored to the original normal operating condition by readjustments and material replacement.
 - (3) Recovered material means waste materials and by-products that have been recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
 - (4) Remanufactured means factory rebuilt to original specifications.
 - (5) Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this Subcontract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Subcontractor shall provide supplies that are new, reconditioned, or remanufactured as defined in this Article.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to JPL for approval.

- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in Subcontract performance if the Subcontractor has proposed the use of such supplies, and JPL has authorized their use.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E , RSA – 09/04] [FAR 52.227-2 – 08/96]

(The provisions of this Article shall be applicable only if the amount of this Subcontract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Subcontractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include, and require inclusion of, this Article in all Lower-tier Subcontracts at any tier for supplies or services (including construction and architect-engineer Lower-tier Subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

NOTICE OF RADIOACTIVE MATERIALS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-7 – 01/97]

(This Article is applicable only if this Subcontract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) inserting 30 days in paragraph (a), with JPL Subcontracts Manager in lieu of Contracting Officer, and adding JPL with the Government in all respects.

NOTICE TO JPL OF LABOR DISPUTES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.222-1 – 02/97]

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice to JPL. The initial notice shall include the following:
 - (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/Lower-tier Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/Lower-tier Subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known. If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Subcontractor agrees to insert the substance of this Article, including this paragraph (b), in any Lower-tier Subcontract to which a labor dispute may delay the timely performance of this Subcontract; except that each such Lower-tier Subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Lower-tier Subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

NOTIFICATION OF OWNERSHIP CHANGES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E CREI- 09/04] [FAR 52.215-19 – 10/97]

(This Article is applicable if it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2)

- (a) The Subcontractor shall make the following notifications in writing:
- (1) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify JPL within 30 days.
 - (2) The Subcontractor shall also notify JPL within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Subcontractor shall:
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide JPL or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- (c) The Subcontractor shall include the substance of this clause in all Lower-tier Subcontracts under this Subcontract that meet the applicability requirement of FAR 15.408(k).

ORDER OF PRECEDENCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
- (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
- (1) The Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule, and
 - (2) Any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise in the Schedule,
 - (3) (c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Subcontract that are required by their terms to be included in Lower-tier Subcontracts shall be required by the Subcontractor to take precedence in the Lower-tier Subcontract over any other provisions.

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.247-64 – 06/00]

- (a) Except as provided in paragraph (b) below, the Subcontractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Subcontract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Subcontractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Subcontractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Subcontract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c)
 - (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590) 400 Seventh Street, SW, Washington, D.C. 20590. Subcontractor and Lower-tier Subcontractor bills of lading shall be submitted through JPL.
 - (2) The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
 - (A) NASA shown as the sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet, if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) The Subcontractor shall insert the substance of this Article, including this paragraph (d), in all Lower-tier Subcontracts or purchase orders under this Subcontract.
- (e) The requirement in paragraph (a) does not apply to:
 - (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.247-63 – 01/97]

(This Article does not apply to Subcontracts or Lower-tier Subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

PRINTING AND DUPLICATING

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, A - E - 09/04] [NFS 1852.208-81 - 10/01]

(This Article does not apply unless this Subcontract requires the Subcontractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), is hereby incorporated into this Article in its entirety.

Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (October 2001), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the Subcontractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Subcontractor or a Lower-tier Subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any Subcontractor or a Lower-tier Subcontractor such as JPL's or a Subcontractor's Telephone Directory or JPL's or a Subcontractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a Subcontractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL, Subcontractor, or Lower-tier Subcontractor representatives, where Government attendance is only incidental, and the Subcontract does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to Lower-tier Subcontractors, the Subcontractor will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating and Copying Management, for all printing, duplicating, copying, forms, and mail management related to the performance of this Subcontract.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Subcontractor to the JPL Subcontracts Manager for submission to the NASA Printing Management Officer through the Contracting Officer.

PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE

[CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04]

The Subcontractor, its employees, agents and Lower-tier Subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Subcontract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Subcontractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The Subcontractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Subcontractor shall include this provision in any Lower-tier Subcontract involving travel subject to JPL approval or requiring that the Lower-tier Subcontractor utilize a privately owned (noncommercial) aircraft.

PROHIBITION OF SEGREGATED FACILITIES

[CT, FP-NR&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.222-21]

(The following Article is applicable to Subcontracts where FAR 52.222-26, Equal Opportunity is applicable)

Incorporate by reference FAR 52.222-21, Prohibition of Segregated Facilities

RELEASE OF INFORMATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 02/09]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Subcontractor agrees that all information released by the Subcontractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, and advertising copy) directly related to the Subcontractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See form JPL 1737, "Release of Information.")
- (b) The Subcontractor agrees to insert this clause including this paragraph in all Lower-tier Subcontracts.

REMOVAL OR REPLACEMENT OF PERSONNEL

[LH/T&M, T&MC – 09/04]

JPL may at any time direct the Subcontractor to remove or replace personnel from the performance of the work hereunder and the Subcontractor shall forthwith comply with such direction. Any replacement shall be subject to the approval of JPL and, if Subcontractor personnel are listed by name in the Schedule, the name and classification and rate or rates per hour shall be added to this Subcontract by Supplemental Agreement.

REQUIRED NOTICES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04]

Unless otherwise specified in this Subcontract, any notice which the Subcontractor is required to provide to JPL under any provision of this Subcontract shall be directed to the JPL Subcontracts Manager or the Manager, Acquisition Division, JPL, or their authorized representatives.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.225- 13 – 07/00]

Incorporate by reference FAR 52.225- 13, Restrictions on Certain Foreign Purchases.

RESTRICTIONS ON SUBCONTRACTOR SALES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 09/04] [FAR 3.503, 52.203-6 –07/95]

(This Article is applicable to Subcontracts and Lower-tier Subcontracts exceeding \$100,000 for other than commercial items.)

Incorporate by reference FAR 52.203-6, Restrictions on Subcontractor Sales.

RIGHTS IN DATA – GENERAL

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC – 02/09] [FAR 52.227-14 – 06/87; NFS 1852.227-14 – 06/87]

(If the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this Subcontract, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

- (a) Definitions.
 - (1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.
 - (2) "Data," as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, and computer software. The term does not include information incidental to Subcontract administration, such as financial, administrative, cost, or pricing, or management information.

- (3) "Form, fit, and function data," as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
 - (4) "Institute" means the California Institute of Technology as a party to this Subcontract.
 - (5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. JPL's rights under this Subcontract are rights of the California Institute of Technology as a party to this Subcontract.
 - (6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government contract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.
 - (7) "Limited rights data," as used in this Article, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
 - (8) "Restricted computer software," as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
 - (9) "Restricted rights," as used in this Article, means the rights of the Government, and in support and in furtherance of its Government contract obligations, the Institute, in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this Article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Subcontract, including minor modifications of such computer software.
 - (10) "Technical data," as used in this Article, means data (other than computer software) which are of a scientific or technical nature.
 - (11) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government contract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- (b) Allocation of Rights.
- (1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government contract obligations, the Institute, shall have unlimited rights in:
 - (A) Data first produced in the performance of this Subcontract;
 - (B) Form, fit, and function data delivered under this Subcontract;
 - (C) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Subcontract; and
 - (D) All other data delivered under this Subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.
 - (2) The Subcontractor shall have the right to:
 - (A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, unless provided otherwise in paragraph (d) of this Article;
 - (B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;
 - (C) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and

- (D) Establish claim to copyright subsisting in data first produced in the performance of this Subcontract to the extent provided in subparagraph (c)(1) of this Article.

(c) Copyright.

(1) Data First Produced in the Performance of This Subcontract.

- (A) Unless provided otherwise in paragraph (d) of this Article, the Subcontractor may establish, without prior approval of JPL, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of JPL is required to establish claim to copyright subsisting in all other data first produced in the performance of this Subcontract.
- (B) When claim to copyright is made, the Subcontractor shall affix the applicable copyright or notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the JPL Subcontract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under a Prime contract between the California Institute of Technology and NASA.")
- (C) For data other than computer software, the Subcontractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, any successor-in-interest of the Institute, or a successor Subcontractor to operate JPL, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government.
- (D) For computer software, the Subcontractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, any successor-in-interest of the Institute, or a successor Subcontractor to operate JPL, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

- (2) Data Not First Produced in the Performance of This Subcontract. The Subcontractor shall not, without prior written permission of JPL, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software, the Subcontractor grants to the Government and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a paid-up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.

- (3) Removal of Copyright Notices. JPL agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data.

- (1) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data other than computer software first produced or specifically used by the Subcontractor in the performance of this Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this Article or expressly set forth in this Subcontract.
- (2) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Subcontract that contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by JPL.

(3)

- (A) The Subcontractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this Subcontract without JPL's prior written permission.
- (B) If the Government desires to obtain copyright in computer software first produced in the performance of this Subcontract for which permission to copyright has not been granted to the Subcontractor as set forth in subdivision (d)(3)(A) of this Article, the Contracting Officer or the Institute may direct the Subcontractor to assert, or authorize the assertion of, claim to copyright in said data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.
- (C) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert."

(e) Unauthorized Marking of Data.

- (1) Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this Article and use of such is not authorized by this Article, or if such data bears any other restrictive or limiting markings not authorized by this Subcontract, JPL may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:
 - (A) JPL shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (B) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer through JPL for good cause shown), the Government or JPL shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (C) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(A) of this Article, the Contracting Officer through JPL shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer through JPL determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the Contracting Officer through JPL determines, with concurrence of NASA, that the markings are not authorized, the Contracting Officer through JPL shall furnish the Subcontractor a written determination, which determination shall become the final Government decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government and JPL shall continue to abide by the markings under this subdivision (e)(1)(C) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government or JPL shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with NASA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.
- (3) This paragraph (e) does not apply if this Subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) (Reserved)

(f) Omitted or Incorrect Markings.

- (1) Data delivered to the Government or JPL without either the limited rights or restricted rights notice as authorized by paragraph (g) of this Article, or the copyright notice required by paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and the Institute assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been

disclosed without restriction outside the Government or JPL, the Subcontractor may request, within six months (or longer time approved by JPL for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and JPL may agree to do so if the Subcontractor:

- (A) Identifies the data to which the omitted notice is to be applied;
- (B) Demonstrates that the omission of the notice was inadvertent;
- (C) Establishes that the use of the proposed notice is authorized; and
- (D) Acknowledges that the Government and the Institute have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) JPL may also:

- (A) Permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
- (B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

- (1) When data other than that listed in subdivisions (b)(1)(A), (B), and (C) of this Article are specified to be delivered under this Subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to JPL under this Subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to JPL are to be treated as limited rights data and not restricted computer software.
- (2) Notwithstanding paragraph (g)(1) of this Article, the Subcontract may identify and specify the delivery of limited rights data, or JPL or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the Institute and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under JPL Subcontract No. _____. These data may be reproduced and used by the Institute or the Government with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Institute or the Government; except that the Institute or the Government may disclose these data outside the Institute or the Government for the following purposes, if any, provided that the Institute or the Government makes such disclosure subject to prohibition against further use and disclosure:

- (1) Use by support service Subcontractors.
- (2) (Reserved)

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

(3)

- (A) Notwithstanding paragraph (g)(1) of this Article, the Subcontract may identify and specify the delivery of restricted computer software, or JPL or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Subcontractor may affix the following "Restricted Rights Notice" to the computer software and the Institute and the Government will thereafter treat the

computer software, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under JPL Subcontract No. _____. It may not be used, reproduced, or disclosed by the Institute or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the Subcontract.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Institute or Government installation to which such computer or computers may be transferred;
 - (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 - (5) Disclosed to and reproduced for use by support service Subcontractors in accordance with subparagraphs (b)(1) through (4) of this Article, provided the Institute or the Government makes such disclosure or reproduction subject to these restricted rights; and
 - (6) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Institute and the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the Subcontract.
- (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

- (B) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE - SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in JPL Subcontract No. _____ with [name of Subcontractor].

(End of notice)

- (C) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Institute and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article, unless the Subcontractor includes the following statement with such copyright notice: "Unpublished - rights reserved under the Copyright Laws of the United States."
- (h) Subcontracting. The Subcontractor has the responsibility to obtain from its Lower-tier Subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the Government and the Institute under this Subcontract. If a Lower-tier Subcontractor refuses to accept terms affording the Government or the Institute such rights, the Subcontractor shall promptly bring such refusal to the attention of JPL and not proceed with that Lower-tier subcontract award without further authorization.
- (i) Relationship to Patents. Nothing contained in this Article shall imply a license to the Government or the Institute under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or the Institute.

- (j) Inspection of Data Withheld. The Subcontractor agrees, except as may be otherwise specified in this Subcontract for specific data items listed as not subject to this paragraph, that the Contracting Officer, an authorized representative, or JPL may, up to three years after acceptance of all items to be delivered under this Subcontract, inspect at the Subcontractor's facility any data withheld pursuant to subparagraph (g)(1) of this Article, for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

RIGHTS IN TECHNICAL PROPOSAL DATA

[CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, RSA – 09/04] [FAR 52.227-23 – 06/87]

(This Article applies to Subcontracts resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this Subcontract, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this Subcontract and any future modifications are based.

SELECTION OF PERSONNEL

[LH/T&M, T&MC – 09/04]

If Subcontractor personnel are not listed by name in the Schedule, the Subcontractor shall be responsible for selecting personnel who are well qualified to perform in the classifications listed, subject, however, to the initial and continuing approval of JPL.

SMALL BUSINESS SUBCONTRACTING PLAN

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 10/10] [FAR 52.219-9 – 04/08]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$550,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) If there will be any Lower-tier Subcontracting under this Subcontract and the basic or any modification exceeds \$550,000, (\$1,000,000 for construction of any public facility), the Subcontractor agrees to submit for JPL approval a Lower-tier Subcontracting Plan (Plan) that separately addresses Lower-tier Subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns and Historically Black Colleges and Universities and Minority Institutions. The Subcontractor further agrees to provide a written update to the Plan for every modification exceeding \$550,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Subcontracting Plan Requirements." The approved Plan and approved updates will be deemed incorporated into this Subcontract.
- (b) If a Plan is required, an Individual Subcontract Report (ISR) and the Summary Subcontract Report (SSR) are deliverables which must be submitted by the Subcontractor to the JPL Subcontracts Manager in accordance with the instructions of FAR 52.219(l).
- (c) It is understood and agreed that the failure of the Subcontractor to comply in good faith with the Article of this Subcontract entitled "Utilization of Small Business Concerns," or with any Plan required to be included in this Subcontract, shall be a material breach of this Subcontract.

SMALL BUSINESS SUBCONTRACTING REPORTING

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 10/10] [NFS 1852.219-75 – 05/99]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$550,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) The Subcontractor shall submit the Summary Subcontract Report semiannually for the reporting periods specified in the Subcontract. All other instructions remain in effect.

- (b) The Subcontractor shall include this clause in all Lower-tier Subcontracts that include the Article titled "Small Business Subcontracting Plan" (FAR 52.219-9).

SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - , RSAE – 09/04] [FAR 22.305 - 07/95; 52.222-4 - 09/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to Subcontracts for supplies, materials, or articles ordinarily available in the open market, Subcontracts for transportation by land, air, or water, or for the transmission of intelligence, Subcontracts of \$100,000 or less, Subcontracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and Subcontracts (or portions of Subcontracts) for supplies in connection with which any required services are merely incidental to the Subcontract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), Subcontracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Act, and Subcontracts for commercial items.
- (b) FAR clause 52.222-4 (Sept 2000) is hereby incorporated by reference in total, except that:
- (1) The words "JPL Subcontracts Manager or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
 - (2) The word "Subcontractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
 - (3) The words "with JPL" shall be substituted for the words "Federal Contract with the same Prime Contractor" wherever they appear.

SUBCONTRACTOR AND LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E CREI– 09/04] [FAR 15.403-4 - 10/06; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Subcontract or any modification exceeds \$650,000.)

- (a) Subcontractor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Subcontract, or the negotiated price of any change, or other modification to this Subcontract is expected to exceed \$650,000, the Subcontractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Subcontractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.
- (2) Exceptions to Cost or Pricing Data.
 - (A)
 - (i) Basic Subcontracts. In lieu of submitting cost or pricing data for the basic Subcontract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
 - (ii) Subcontract Modifications. In lieu of submitting cost or pricing data for modifications under this Subcontract, for price adjustments expected to exceed \$650,000 on the date of the agreement on price or the date of the award, whichever is later, the Subcontractor may submit a written request for exception by submitting the information described under paragraph (B), below.
 - (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

- (B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
 - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.
 - (iii) Information on modifications of Subcontracts or Subcontracts for commercial items. If (i) the original Subcontract or Lower-tier Subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a Subcontract or Lower-tier Subcontract for a commercial item; and (ii) the modification (to the Subcontract or Lower-tier Subcontract) is not exempted based on one of these exceptions, then the Subcontractor may provide information to establish that the modification would not change the Subcontract or Lower-tier Subcontract from a Subcontract or Lower-tier Subcontract for the acquisition of a commercial item to a Subcontract or Lower-tier Subcontract for the acquisition of an item other than a commercial item.
- (C) The Offeror/Subcontractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Subcontractor's determination of the prices to be offered in the catalog or marketplace.
- (b) Lower-tier Subcontractor Cost or Pricing Data.
- (1) Before awarding any Lower-tier Subcontract expected to exceed \$650,000 when entered into, or before pricing any Lower-tier Subcontract modification involving a pricing adjustment expected to exceed \$650,000, the Subcontractor shall require the Lower-tier Subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the Lower-tier Subcontract or modification is eligible for an exception listed in paragraph (a), above.
 - (2) The requirement for obtaining certified cost or pricing data with respect to any Lower-tier Subcontract change or other modification does not apply to any Lower-tier Subcontract change or modification, at any tier, where this Subcontract is a firm fixed-price or firm fixed-price with escalation Subcontract unless such change or other modification results from a Subcontract change or other modification to this Subcontract, nor does it apply to a Lower-tier Subcontract change or other modification, at any tier, where this Subcontract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Subcontract.
 - (3) The Subcontractor shall require the Lower-tier Subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the Lower-tier Subcontract or Lower-tier Subcontract modification.

- (4) In each Lower-tier Subcontract that exceeds \$650,000 when entered into, the Subcontractor shall insert either:
- (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the Lower-tier Subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.
- (c) Price Reduction for Defective Cost or Pricing Data.
- (1) If any price, including profit or fee, negotiated in connection with this Subcontract, or any cost reimbursable under this Subcontract, was increased by any significant amount because (i) the Subcontractor or a Lower-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a Lower-tier Subcontractor or prospective Lower-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.
 - (2) Any reduction in the Subcontract price under paragraph (1) above due to defective data from a prospective Lower-tier Subcontractor that was not subsequently awarded the Lower-tier Subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual Lower-tier Subcontract or (ii) the actual cost to the Subcontractor, if there was no Lower-tier Subcontract, was less than the prospective Lower-tier Subcontract cost estimate submitted by the Subcontractor; provided, that the actual Lower-tier Subcontract price was not itself affected by defective cost or pricing data.
 - (3)
 - (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
 - (i) The Subcontractor or Lower-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Subcontractor or Lower-tier Subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.
 - (iv) The Subcontractor or Lower-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.
 - (B)
 - (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Subcontract price reduction if:
 - a. The Subcontractor certifies to the Contracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
 - (ii) An offset shall not be allowed if:
 - a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or

- b. The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the Subcontract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Subcontractor's defective pricing including:
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Subcontractor or Lower-tier Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

SUBCONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (SUBCONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL)

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) When work under this Subcontract is to be performed at any JPL-controlled facility, the Subcontractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Subcontractor also agrees to notify the cognizant Subcontracts Manager prior to hiring an applicant who so identifies a relative. The Subcontractor agrees to abide by JPL's determination as to whether the applicant may be assigned to a particular JPL organization.
- (b) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouse/same-sex-domestic-partner, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.

SUBCONTRACTOR RECRUITING ACTIVITY

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

Except as may be specifically authorized by JPL in writing, during the performance of this Subcontract the Subcontractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

TECHNICAL DIRECTION

[FP-NR&D, LH/T&M, T&MC, FPC, A - E, FP-R&D, RSA – 09/04] [NFS 1852.242-70 – 09/93]

- (a) Performance of the work under this Subcontract is subject to the written technical direction of the Contract Technical Manager (CTM). "Technical direction" means a directive to the Subcontractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Subcontractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of this Subcontract.
- (b) The CTM does not have the authority to, and shall not, issue any instruction purporting to be technical direction that:
 - (1) Constitutes an assignment of additional work outside the statement of work;
 - (2) Constitutes a change as defined in the changes clause;
 - (3) Constitutes a basis for any increase or decrease in the total estimated Subcontract cost, the fixed fee (if any), or the time required for Subcontract performance;
 - (4) Changes any of the expressed terms, conditions, or specifications of the Subcontract; or
 - (5) Interferes with the Subcontractor's rights to perform the terms and conditions of the Subcontract.

- (c) All technical direction shall be issued in writing by the CTM.
- (d) The Subcontractor shall proceed promptly with the performance of technical direction duly issued by the CTM in the manner prescribed by this clause and within the CTM's authority. If, in the Subcontractor's opinion, any instruction or direction by the CTM falls within any of the categories defined in paragraph (b) of this clause, the Subcontractor shall not proceed but shall notify the JPL Subcontracts Manager in writing within 5 working days after receiving it and shall request the JPL Subcontracts Manager to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate Subcontract modification within a reasonable time or advise the Subcontractor in writing within 30 days that the instruction or direction is--
 - (1) Rescinded in its entirety; or
 - (2) Within the requirements of the Subcontract and does not constitute a change under the changes clause of the Subcontract, and that the Subcontractor should proceed promptly with its performance.
- (e) Any action(s) taken by the Subcontractor in response to any direction given by any person other than the JPL Subcontracts Manager or the CTM shall be at the Subcontractor's risk.

TERMINATION – LABOR-HOUR/TIME-AND-MATERIAL

[LHT&M, T&MC – 09/04] [FAR 52.249-6, ALT. IV – 09/96]

- (a) JPL may terminate performance of work under this Subcontract in whole or, from time to time, in part, if:
 - (1) JPL determines that a termination is in the interest of the Institute or the Government.
 - (2) The Subcontractor defaults in performing this Subcontract and fails to cure the default within 10 days (unless extended by JPL) after receiving a JPL notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) JPL shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of the Institute or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Article of this Subcontract entitled "Excusable Delays," the rights and obligations of the parties will be the same as if the termination was for the convenience of the Institute or the Government.
- (c) After receipt of a Notice of Termination, and except as directed by JPL, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
 - (1) Stop work as specified in the notice.
 - (2) Place no further Lower-tier Subcontracts or orders (referred to as Lower-tier Subcontracts in this Article), except as necessary to complete the continued portion of the Subcontract.
 - (3) Terminate all Lower-tier Subcontracts to the extent they relate to the work terminated.
 - (4) Assign to JPL, in the manner and to the extent directed by JPL, all right, title, and interest of the Subcontractor under the Lower-tier Subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of Lower-tier Subcontracts, the cost of which would be reimbursable in whole or in part, under this Subcontract; approval or ratification will be final for purposes of this Article.
 - (6) Transfer title (if not already transferred) and, as directed by JPL, deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, would be required to be furnished to JPL, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Subcontract, the cost of which the Subcontractor has been or will be reimbursed under this Subcontract.

- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Institute under this Subcontract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (d) The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Subcontractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the Subcontractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Subcontractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept the items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Subcontractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Subcontractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Subcontractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Subcontractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) above, the Subcontractor and JPL may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Subcontract shall be amended, and the Subcontractor paid the agreed amount.
- (h) If the Subcontractor and JPL fail to agree in whole or in part on the amount to be paid because of the termination of work, JPL shall determine, on the basis of information available, the amount, if any, due the Subcontractor, and shall pay the amount determined as follows:
 - (1) If the termination is for the convenience of the Institute, include:
 - (A) An amount for direct labor hours (as defined in the Schedule of the Subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Subcontractor;
 - (B) An amount (computed under the provisions for payment of materials or other direct costs) for material expenses or other direct costs incurred before the effective date of termination, not previously paid to the Subcontractor;
 - (C) An amount for labor and material expenses and other direct costs computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by JPL; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
 - (D) If not included in (A), (B), or (C) above, the cost of settling and paying termination settlement proposals under terminated Lower-tier Subcontracts that are properly chargeable to the terminated portion of the Subcontract; and
 - (E) The reasonable costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- (ii) The termination and settlement of Lower-tier Subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
- (2) If the termination is for default of the Subcontractor, include the amounts computed under (1) above but omit:
 - (A) Any amount for preparation of the Subcontractor's termination settlement proposal; and
 - (B) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by JPL.
- (i) The cost principles and procedures in Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) The determination by JPL of the amount, if any, due the Subcontractor by reason of the termination of this Subcontract, as provided in paragraphs (f) or (h) above or paragraph (k) below of this Article, shall not be final and conclusive with regard to the Subcontractor's right to pursue any available legal remedy in the event the Subcontractor disagrees with such determination, provided that, if the Subcontractor has failed to submit its claim within the time provided in paragraph (f) above, and has failed to request an extension of such time, the determination of JPL as to the amount due shall be final and conclusive.
- (k) In arriving at the amount due the Subcontractor under this Article, there shall be deducted:
 - (1) All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this Subcontract;
 - (2) Any claim which the Institute has against the Subcontractor under this Subcontract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this Article and not recovered by or credited to the Institute.
- (l) If the termination is partial, the Subcontractor may file with the Institute a proposal for an equitable adjustment of the price(s) for the continued portion of the Subcontract. The Institute shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination, unless extended in writing by JPL.
- (m)
 - (1) The Institute may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the Subcontract, if the Institute believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the Institute upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid to the Institute. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Institute because of the circumstances.

TIMEKEEPING AND PAYMENTS

[LH/T&M, T&MC – 10/10] [FAR 52.232-7 – 02/07, ALT. I – 02/07]

- (a) General. The Subcontractor shall submit invoices to JPL as indicated in the Schedule and discussed below. Payment to the Subcontractor for hours worked by the Subcontractor employees listed in the Schedule (or Subcontract Work Order) (or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule) will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the Subcontractor for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.

(b) Timekeeping.

- (1) For work to be performed for JPL at a JPL location, the Subcontractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be appropriately determined by the Subcontractor. The Subcontractor is responsible for establishing a process that monitors its personnel leaving JPL premises during the workday.
- (2) For work performed at a location other than JPL, the Subcontractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the work shift that are worked by its employees. Unless otherwise provided for in this Subcontract, the Subcontractor shall maintain timekeeping records in accordance with form JPL 1725, "Minimum Timekeeping Requirements for Labor-Hour Type Procurements to be Performed at Off-Lab Facilities."
- (3) Overtime is defined as work performed in excess of eight hours in one day or forty hours in one workweek or in accordance with applicable State and Federal Laws and Regulations.

(c) Hourly Rate.

- (1) Hourly rate means the rate(s) prescribed in the Subcontract for payment for labor that meets the labor category qualifications of a labor category specified in the Subcontract that are-
 - (A) Performed by the Subcontractor;
 - (B) Performed by the Lower-tier Subcontractors; or
 - (C) Transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control.
- (2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or Subcontract Work Order by the number of direct labor hours performed. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time. Mealtime deductions will be as determined by the Subcontractor. At the end of the day, working time will not be computed beyond the end of the designated approved shift unless overtime is authorized. Invoices shall be submitted weekly, (unless another interval is specified in the Schedule) to the attention of the JPL Invoice Management Section. Invoices shall contain the accuracy representation as required by JPL, and shall be submitted by one of the authorized representatives specified in the Schedule. Promptly after receipt of each invoice, the Institute shall, except as otherwise provided in this Subcontract, and subject to the terms of (g) below, pay the invoice as approved by JPL.
- (3) The hourly rates shall be paid for all labor performed on the Subcontract that meets the labor qualifications specified in the Subcontract. Labor hours incurred to perform tasks for which labor qualifications were specified in the Subcontract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the Subcontract, unless specifically authorized by the Subcontracts Manager.
- (4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable.
- (5) Unless otherwise prescribed in the Schedule, the Institute shall withhold five percent of the amounts due under this Subcontract, or such other amount that the Institute considers necessary to protect the interest of the Institute and the Government, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Subcontractor as provided in paragraph (h) below.
- (6) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Subcontractor having performed work on an overtime basis. If the Schedule or Subcontract Work Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by JPL.

(d) Materials

- (1) For purposes of this clause-

- (A) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
- (B) *Materials* means—
 - (i) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Subcontractor under a common control;
 - (ii) Subcontracts for supplies and incidental services for which there is not a labor category specified in the Subcontract;
 - (iii) Other direct costs (e.g., incidental services for which there is not a labor category specified in the Subcontract, travel, computer usage charges, etc.); and
 - (iv) Applicable indirect costs.
- (2) If the Subcontractor furnishes its own materials that meet the definition of commercial item at FAR 2.101, the price to be paid for such materials shall not exceed the Subcontractor's established catalog or market price, adjusted to reflect the
 - (A) Quantities being acquired; and
 - (B) Actual cost of any modifications necessary because of Subcontract requirements;
- (3) Except as provided for in paragraph (d)(2) of this Article, JPL will reimburse the Subcontractor for allowable cost of materials provided the Subcontractor-
 - (A) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
 - (B) Ordinarily makes these payments within 30 days of the submission of the Subcontractor's payment request to JPL and such payment is in accordance with the terms and conditions of the agreement or invoice.
- (4) Payment for materials is subject to the Allowable Cost and Payment Article of this Subcontract. JPL will determine allowable costs of materials in accordance with Subpart 31.2 of FAR in effect on the date of this Subcontract and any corresponding implementing or supplementing provisions in the NFS.
- (5) The Subcontractor may include allocable indirect costs and other direct costs to the extent they are-
 - (A) Comprised only of costs that are clearly excluded from the hourly rate;
 - (B) Allocated in accordance with the Subcontractor's written or established accounting practices; and
 - (C) Indirect costs are not applied to Subcontracts that are paid at the hourly rates.
- (6) To the extent able, the Subcontractor shall-
 - (A) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (B) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the Subcontracts Manager and give reasons. The Subcontractor shall give credit to JPL for cash and trade discounts, rebates, scrap, commission, and other amounts that have accrued to the benefit of the Subcontractor; or would have accrued except for the fault or negligence of the Subcontractor. The Subcontractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Subcontractors or lost through fault of JPL.
- (7) Except as provided for in FAR 31.205-26(e) and (f), JPL will not pay profit or fee to the Subcontractor on materials.
- (8)
 - (A) JPL will reimburse the Subcontractor for costs of Lower-tier Subcontracts that are authorized under the Lower-tier Subcontracts clause of this Subcontract, provided that the costs are consistent with paragraph (d)(6) of this Article.
 - (B) JPL will limit reimbursable costs in connection with Lower-tier Subcontracts to the amounts paid for supplies and services purchased directly for the Subcontract when the Subcontractor has made or will make payments determined due of cash, checks, or other forms of payment to the Lower-tier Subcontractor:

- (i) In accordance with the terms and conditions of a Lower-tier Subcontract or invoice; and
 - (ii) Ordinarily within 30 days of the submission of the Subcontractor's payment request to JPL
- (C) JPL will not reimburse the Subcontractor for any costs arising from the letting, administration, or supervision of performance of the Lower-tier Subcontract, if the costs are included in the hourly rates payable under paragraph (c)(2) of this Article.
- (e) Total Cost. It is estimated that the total cost to the Institute for the performance of this Subcontract shall not exceed the ceiling price set forth in the Schedule and the Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Subcontract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this Subcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85% of the ceiling price in the Schedule, the Subcontractor shall notify JPL, giving a revised estimate of the total price to the Institute for performing this Subcontract with supporting reasons and documentation. If at any time during performance of this Subcontract, the Subcontractor has reason to believe that the total price to the Institute for performing this Subcontract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify JPL, giving a revised estimate of the total price for performing this Subcontract, with supporting reasons and documentation. If at any time during performance of this Subcontract, the Institute has reason to believe that the work to be required in performing this Subcontract will be substantially greater or less than the stated ceiling price, JPL will so advise the Subcontractor, giving the then revised estimate of the total amount of effort to be required under the Subcontract.
- (f) Ceiling Price. The Institute will not be obligated to pay the Subcontractor any amount in excess of the ceiling price in the Schedule, unless and until JPL notifies the Subcontractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this Subcontract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material or other direct costs had been incurred after the increase in the ceiling price. Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Article or any other provision of this Subcontract shall not be considered an authorization to the Subcontractor to exceed the ceiling price set forth in the Schedule in the absence of a statement in a Unilateral Modification, or other Subcontract modification, increasing the ceiling price.
- (g) Audit. At any time before final payment under this Subcontract, JPL may audit or have audited the invoices and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices that are found by JPL not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the invoice designated by the Subcontractor as the "completion invoice" and supporting documentation, and upon compliance by the Subcontractor with all terms of this Subcontract (including, without limitation, terms relating to patents and terms of paragraphs (h) below), the Institute shall promptly pay any balance due the Subcontractor. The completion invoice and supporting documentation, shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this Subcontract, but in no event later than six months (or such longer period as JPL may approve in writing) from the date of completion.
- (h) Assignment and Release of Claims. The Subcontractor, and each assignee under an assignment entered into under this Subcontract and in effect at the time of final payment under this Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Subcontract, a release discharging the Institute, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Subcontract, subject only to the following exceptions:
 - (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.
 - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this Subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to JPL not more than six years after the date of the release or the date of any notice to the Subcontractor that the Institute is prepared to make final payment, whichever is earlier.

- (3) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of the Institute or the Government against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this Subcontract relating to patents.
- (i) Refunds. The Subcontractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Subcontractor or any assignee, that arise under the materials or other direct costs portion of this Subcontract and for which the Subcontractor has received reimbursement, shall be paid by the Subcontractor to the Institute. The Subcontractor and each assignee, under an assignment entered into under this Subcontract and in effect at the time of final payment under this Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Subcontract, an assignment to the Institute of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to JPL.
- (j) Interim Payments. Interim payments for Subcontract financing will be made on the 30th day after JPL receives a proper payment request. In the event that the Institute requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the Subcontract, JPL is not compelled to make payment by the specified due date.
- (k) If this is a labor-hour Subcontract, the terms of this Article that govern reimbursement for materials furnished are considered to have been deleted.

TOXIC CHEMICAL RELEASE REPORTING

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.223-14 - 10/96]

(This Article is applicable to all Subcontracts where the value of the Subcontract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Subcontract, the Subcontractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [NFS 1852.227-87 - 04/89]

(This Article applies to Subcontracts and Lower-tier Subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data that are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station Subcontractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Subcontractor agrees, when specifically directed in writing by the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Subcontractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Subcontractor or any Lower-tier Subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection of any proprietary technical data that may be available to the Subcontractor or any Lower-tier Subcontractor under that Article.

- (e) The Subcontractor agrees to include this Article, including this paragraph (e), in all Lower-tier Subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

UNION DATA FOR ON-SITE SUBCONTRACTORS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M – 09/04]

(This Article applies [i] to any time-and-material or labor-hour Subcontract where the work is performed at a JPL-controlled facility and [ii] to any other Subcontract for which any Subcontractor personnel work in residence at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this Article.)

The Subcontractor shall provide JPL-requested union information, including union information pertaining to its Lower-tier Subcontractors, if any, on the "Request for Union Data Regarding On-Site Contractors and Their Subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant Subcontracts Manager's attention. Any changes in the data, such as the addition of a new union Lower-tier Subcontractor, shall be provided to JPL through timely resubmission of the following form:

REQUEST FOR UNION DATA REGARDING ON-SITE SUBCONTRACTORS AND THEIR LOWER-TIER SUBCONTRACTORS

1. Date:
2. Subcontract number:
3. Scheduled Subcontract completion date:
4. Subcontractor name:
5. Total number of on-site personnel:
6. Cognizant Subcontracts Manager:
7. Lower-tier Subcontractors under this Subcontract with union personnel working on-site at JPL-controlled facilities.
Number of Lower-tier Subcontractor Personnel at JPL Site:

Lower-tier Subcontractor	Total Personnel	No. of Union Personnel
8. Brief description of scope of work and location of work site sufficient to locate the union Subcontract and Lower-tier Subcontract workers.
9.
 - a. Local union name: Local No. (if any):
 - b. Number of on-site Subcontractor/Lower-tier Subcontractor personnel represented:
 - c. Name, phone number and address of business agent representing the local union:
 - (1) Name:
 - (2) Phone:
 - (3) Address:
 - d. Expiration date of labor agreement:
 - e.
 - (1) If applicable, the employer association responsible for negotiating each agreement for Subcontractor/Lower-tier Subcontractor:
 - (2) If applicable, the names of Subcontractor's/Lower-tier Subcontractor's local employer representatives who take part in such negotiations:
10. Name, phone number and address of the Subcontractor's Lower-tier Subcontractor's representative who is responsible for handling labor relations/human resources issues:
 - a. Name:
 - b. Phone:
 - c. Address:

(Note: For items 8, 9, and 10, provide for each union and also for each on-site Lower-tier Subcontract, as applicable.)

USE OF RURAL AREA SMALL BUSINESSES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 02/00] [NFS 1852.219-74 – 09/90]

(Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

UTILIZATION OF SMALL BUSINESS CONCERNS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04] [FAR 52.219-8 – 10/00]

(This Article is applicable when the Subcontract amount is expected to be over \$100,000, unless (i) a personal services Subcontract is contemplated, (ii) a commercial items or services Subcontract, or (iii) the Subcontract together with all its Lower-tier Subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference FAR 52.219-8, Utilization of Small Business Concerns.

